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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,473	08/18/2006	Geert Heyse	31118/DY0303	6187
4743 7590 03/16/2010 MARSHALL, GERSTEIN & BORUN LLP 233 SOUTH WACKER DRIVE 6300 SEARS TOWER CHICAGO, IL 60606-6357				
EXAMINER MARINI, MATTHEW G				
ART UNIT 2854		PAPER NUMBER		
MAIL DATE 03/16/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/562,473

Applicant(s)

HEYSE ET AL.

Examiner

MATTHEW G. MARINI

Art Unit

2854

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 48-54, 57, 58 and 69-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 48-54, 57, 58 and 69-73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 48, 49, 51-53, 57, 58, 69-71 and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Ishigouoka et al. (6,146,035).

With respect to claims 48 and 58, Ishigouoka et al. teaches in Fig. 1 a label printer for printing, said label printer comprising at least one print head, 1a, arranged to print an image, A, on a print medium (tape); and a cutter, 6, arranged to provide a cut, C1 and C2, on either side of the region, L4, between first and second areas of a print medium, defined by L2, as seen in Fig 10..

Note the language directed towards the label/tape and what is printed on the label/tape, i.e. "wherein the at least one print head is arrange to print a first background for one label and a different, second background for a second, subsequent label in a manner such that there is a region within which the first and second backgrounds meet to provided one of a blend between the first and second backgrounds and a boundary between the first and second background that is unclear", is not part of the claimed combination of a label printer, but rather reads as intended use of the label printer and it's recited structure, i.e. "one print head" and "cutter". Therefore, the language

regarding the label and its background has been interpreted intended use language where the taught structure above is capable of performing the intended use language.

With respect to claim 49, Ishigouoka et al. teaches in Fig. 1 a label printer for printing wherein the at least one print head, 1a, is arranged to print information, i.e. 311 and 312, on said region, L4, between said first and second labels.

With respect to claim 51, Ishigouoka et al. teaches in Fig. 1 a label printer for printing wherein at least one of said cuts is a full cut.

With respect to claim 52, Ishigouoka et al. teaches in Fig. 1 a label printer for printing comprising a reverser, i.e. controller, arranged to reverse an image receiving material, 3a, on which the labels are capable of being arranged to be printed, Col. 12 lines 25-33.

With respect to claim 53, Ishigouoka et al. teaches in Fig. 1 a label printer for printing wherein said reverser, i.e. controller, is arrange to reverse the image receiving medium, 3a, from the cutter, 6, once cutter cuts at C2, to said at least one print head, 1a, Col. 7 lines 16-35.

With respect to claim 57, Ishigouoka et al. teaches in Fig. 1 a label printer for printing wherein the at least one print head, 1a, is arranged to print backgrounds on said first and second labels in different colors insofar as what is structurally recited.

With respect to claims 69, 70 and 73, a printer Ishigouoka et al. teaches in Fig. 1 a label printer wherein the printer is capable (via the print head) of printing information to a user on the region, wherein the information comprises one or more of: an indication of an amount of tape remaining in a cassette, a serial number numbering a label in a series of labels, and an indication of where a tab cut is located.

Note what is printed on the print medium is not a structural limitation that further structural the invention, but rather reads on how the recited structure is used. Therefore the taught structure above is capable of performing the intended use recited.

With respect to claim 71, Ishigouoka et al. teaches in Fig. 1 a label printer wherein one or both of the cuts on either side of the region comprises a full cut, as seen in Fig. 6.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 50, 54, and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishigouoka et al. (6,146,035) in view of Konishi et al. (2002/0085870).

With respect to claims 50, 54, and 72, Ishigouoka et al. teaches all that is claimed in the above rejection of claims 48 and 58, including at least one of said at least one print head, 1a, is arranged to start printing an image on said image receiving medium, 3a, on one side of cut provided by said cutter, 6, and to continue printing on the other side of said cut once the image receiving medium is feed to the print head, 1a. However, Ishigouoka et al. fails to teach the cut being partial.

Konishi et al. teaches a label printer similar to the printer taught by Ishigouoka et al. where the tape is partially cut, paragraph 66. Because both Ishigouoka et al. and Konishi et al. teach cutting means for cutting a tape like web, it would have been obvious to one of ordinary skill in the art at the time of invention to substitute one cutting means with another to achieve the predictable results of cutting a tape like material according the desired sized.

Response to Arguments

Applicant's arguments filed 1/25/10 have been fully considered but they are not persuasive.

Regarding applicant's, specifically the printer shown in Figure 1 of Ishigouoka does not disclose first and second backgrounds of first and second labels meeting within a region. One can see from Figure 10 of Ishigouoka, which illustrates the result of

printing using the printer illustrated in Figure 1, that backgrounds of adjacent labels are spaced well apart. Moreover, there is no teaching in Ishigouoka of a first background of one label and a second background of a second, subsequent label blending, or of a boundary between the first and second backgrounds being unclear, the examiner would like to point out the language recited within the claims directed to the above argument reads as intended use of the recited structure. Therefore, Ishigouoka is capable of performing the recited intended use language.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the distances of the cuts between the first and second images) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW G. MARINI whose telephone number is (571)272-2676. The examiner can normally be reached on Monday-Friday 8:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on (571)-272-2258. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Matthew Marini

/Judy Nguyen/
Supervisory Patent Examiner, Art Unit 2854